

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**RESPONSE OF THE TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP,
D/B/A KAMEHAMEHA SCHOOLS, LLC TO THE NOTICE OF REJECTION
OF CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
AND ABANDONMENT OF PROPERTY IN CONNECTION THEREWITH**

The Trustees of the Estate of Bernice Pauahi Bishop, d/b/a Kamehameha Schools, LLC (the “Landlord”), through its undersigned counsel, submits this Response (the “Response”) to the *Notice of Rejection of Certain Unexpired Leases of Nonresidential Real Property and Abandonment of Property in Connection Therewith* (the “Rejection Notice”),² filed by the above-

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

² Docket No. 3300.

captioned debtors (the “Debtors”). In support of the Objection, the Landlord respectfully states as follows:

1. The Debtors filed the Rejection Notice on April 19, 2019 seeking to reject the lease (the “Lease”) between the Landlord and the Debtors for the premises in Kaneohe, Hawaii (the “Leased Premises”) as of April 19, 2019. According to the Rejection Notice, and the order governing the procedures for the rejection of unexpired leases in these cases (the “Rejection Procedures Order”),³ the effective date of rejection is the later of the (i) service and filing of the Rejection Notice, and (ii) date the Debtors surrendered the Leased Premises via the delivery of keys, key codes, and alarm codes to the Landlord, or if not delivering such keys or codes, providing notice that the Landlord may re-let the Leased Premises.

2. The Debtors have not surrendered the Leased Premises. The store at the Leased Premises is still open, the Purchaser continues to conduct business at the Premises and the Landlord is unable to confirm that the Debtors have removed any hazardous or toxic materials from the Leased Premises as required by paragraph 4 of the Rejection Procedures Order before the rejection can become effective.⁴ As a result, without the consent of the Landlord, the effective date of rejection date cannot be April 19, 2019.

3. On February 5, 2019, the Landlord filed a motion to compel payment of post-petition rent and related obligations.⁵ The Debtors, Transform, and the Landlord have been discussing the disposition of the Lease and the Leased Premises but have not yet memorialized any resolution. In the spirit of these negotiations, the Debtors have extended the Landlord’s time

³ Docket No. 800.

⁴ See Rejection Procedures Order ¶ 4 (“*provided* that the Debtors shall remove any hazardous or toxic materials (as such terms are defined in any applicable federal, state or local law, rule, regulation, or ordinance) from the leased premises prior to the Rejection Date”).

⁵ Docket No. 2414.

to object to the Rejection Notice, but the parties have not yet reached an agreement regarding the rejection effective date. The Landlord is files this Response to preserve its rights with respect to the removal of any hazardous or toxic materials from the Leased Premises and the effective date of the rejection of the Lease.

WHEREFORE, the Landlord requests that the Court delay entering the proposed order approving the rejection of the Lease as requested herein until the Landlord is able to confirm the removal of any hazardous or toxic materials from the Leased Premises and the parties reach agreement on the effective date of the rejection of the Lease, and grant such other and further relief as is just.

Dated: May 2, 2019
New York, New York

KELLEY DRYE & WARREN LLP

/s/ Robert L. LeHane

Robert L. LeHane

Maeghan J. McLoughlin

Randall L. Morrison, Jr.

101 Park Avenue

New York, New York 10178

Tel.: (212) 808-7800

Fax: (212) 808-7897

*Counsel for Trustees of the Estate of Bernice
Pauahi Bishop, d/b/a Kamehameha Schools*